

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 341 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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HITESHMUMAR D VYAS

Versus

STATE OF GUJARAT

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Appearance:

MR YV BRAHMBHATT for Petitioner  
PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE S.M.SONI and  
MR.JUSTICE A.R.DAVE

Date of decision: 31/03/97

ORAL JUDGEMENT

Rule. Learned Advocate Mrs. M.S. Sharma waives service of rule on behalf of the respondent no.3. Learned A.G.P. Mr. S.R.Divetia waives service of rule on behalf of the respondents nos.1 and 2.

With the consent of the parties Advocates, the matter is heard today for final hearing.

In response to our notice issued on 19th March,1997, the respondent no.3 has kept present before us Miss Varsha- his daughter.

We have ascertained the desire of Miss Varsha who has grown adult on 31st January, 1997 as her date of birth is 10th January,1979. The other party has no dispute about her date of birth.

The petitioner in the petition has alleged that he came in contact with Varshaben since last 2 to 3 years and got married as per Hindu Rites on 31st January,1997. On that very day they got their marriage registered before the Registrar of Marriages, Wadaj, Ahmedabad. They have produced the xerox copy of registration certificate wherefrom it appears that Rohitkumar B. Joshi has acted as the Priest. The said Rohitkumar B. Joshi is also present in the Court in the Company of the petitioner at the instance of the petitioner as he also happens to be a friend of the petitioner.

Under the provisions of Section 8 of the Hindu Marriage Act, 1955, a Hindu Marriage is required to be registered under the rules framed by the State Government. Accordingly at page 12 of the petition, the copy of Memorandum of Marriage duly got registered with the Registrar of Marriages, Wadaj, Ahmedabad is produced. The said Memorandum of Marriage bears name, address and signatures of bridegroom, bride and the Priest. It does not contain the name, address and signature of father or guardian of bride or bridegroom as it is alleged that bridegroom and bride both are major and of marriageable age. A Hindu Marriage is required to be registered under Section 8 of the Hindu Marriage Act,1955. The question is whether the present marriage alleged by the petitioner with Varsha is a Hindu Marriage or not? On verification the petitioner Varshaben and said Rohitkumar who are present before us in presence of their Advocates have stated before us that neither of the rites nor any of ceremonies even including Saptapadi has taken place. To have a valid Hindu Marriage essential rites which may be said to be the requirement under any ceremonial marriage are invocation before sacred fire and Saptapadi. The petitioner and Varshaben both have admitted before us that they are Hindus and are therefore governed under Hindu Law. They have customs in their community. If they want to marry, then, the essential rites for

ceremonial marriages are as stated above - namely, invocation before the sacred fire and Saptapadi. When the essential rites are admittedly not performed, it cannot be said to be a Hindu Marriage. In the instant case, the petitioner and Varshabe and the Priest-Rohitkumar has admitted that no essential rites were performed either at Kalol or at Ahmedabad or at any other place before registration of marriage. Thus, there is no Hindu Marriage between the petitioner and Varshaben. When there is no Hindu Marriage in accordance with law, the registration of such marriage does not make a Hindu Marriage. The marriage is registered by the Registrar on the presumption and the statements that valid Hindu Marriage has taken place between the petitioner and Varshaben. When all the concerned parties have admitted that no essential rites to conform a valid Hindu Marriage are performed, there is no valid Hindu Marriage and the registration of such Hindu Marriage does not make a marriage at all, much less, a valid marriage. When there is no marriage as per Hindu rites between the Hindus the question of registration thereof under Section 8 of the Hindu Marriage Act does not arise and even if the marriage is registered the registration in our opinion is illegal, bad and ineffective. This apart, all the parties concerned, namely, the petitioner, Varshaben and Rohitkumar-the Priest have admitted that neither of them have come to Ahmedabad and signatures in this registration certificate is ascribed at Kalol. On inquiry by police at our instance, it is disclosed by police and not controverted by the petitioner, Miss Varsha or the Priest that the address of Akash Deep Society, Wadaj, is a fake one and neither of them nor any of their relatives have resided or resides there. In view of this fact also Registrar at Ahmedabad has no jurisdiction to register the marriage. Thus, the registration is held to be illegal, bad, and ineffective in law.

Irrespective of the fact whether the marriage has taken place between the petitioner and Varshaben or not, as Varshaben has grown adult we have verified her desire as to where she would like to go. She expressed her desire to remain with her parents. She stated that she does not want to go with the petitioner. In view of this fact, we permit Varshaben to go with her parents as expressed by her before us in presence of the petitioner, his Advocate and the Priest. It would be in the fitness of the matter to record the statement of the father of Varshaben who is present before us. He states that according to his view Varsha has still not attained age of maturity even though she has completed 18 years of

age; he will not get her married until she expresses a desire to marry and with the boy of her choice.

In view of the above observations, the learned Advocate for the petitioner seeks permission to withdraw the petition. Permission is granted. Petition stands disposed of as withdrawn. Copy of this order be sent to the Registrar of Marriages, Wadaj, Ahmedabad alongwith xerox copy of the Memorandum which is filed at serial no.85/97 at page 50 of Volume 10 of the Registrar of Marriages maintained under the Bombay Registrar of Marriages Act,1955 with a direction that the Registrar shall make entry of this order in the said Memorandum. Rule is discharged.

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